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14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16
17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 EVARISTO CHECCHIN,
21 Defendant.

CASE NO. 1:23-CR-00075 JLT-SKO
**STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXCLUSION OF TIME
AND ORDER**

Date: September 6, 2023
Time: 1:00 p.m.
Honorable Sheila K. Oberto

22 The United States of America, by and through PHILLIP A. TALBERT, United States Attorney,
23 and ARIN C. HEINZ, Assistant United States Attorneys, and the defendant, by and through Mr. Peter
24 Jones, his attorney of record, hereby stipulate to continue the status conference in this case from
25 September 6, 2023, until November 15, 2023 at 1:00 p.m.

26 The Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
27 "counteract[s] substantive open endedness with procedural strictness," "demand[ing] on-the-record
findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such
failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
(9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
findings on the record "either orally or in writing").

28 Ends-of-justice continuances are excludable only if "the judge granted such continuance on the

1 basis of his findings that the ends of justice served by taking such action outweigh the best interest of the
2 public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is
3 excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or
4 finding that the ends of justice served by the granting of such continuance outweigh the best interests of
5 the public and the defendant in a speedy trial.” *Id.*

6 This Court should consider the following case-specific facts in finding excludable delay
7 appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If
8 continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611
9 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

10 The parties request that time be excluded between September 6, 2023 and November 15, 2023
11 for the following reasons:

12 1. The discovery in this case is over 11 GB of data and was produced to the defense counsel on
13 May 17, 2023. The discovery consists of recorded conversations between the defendant and a
14 confidential informant, transcripts of the same conversations, investigative reports, and photographs.
15 The defense counsel reviewed the discovery and has spoken with the United States about the case.

16 2. Defense counsel has met with Mr. Checchin and is continuing its own investigation into the
17 charges in the Indictment. The defense counsel requests further time to review discovery, consult with
18 his client, investigate the underlying allegations and engage in conversations with the government
19 counsel about possible resolution.

20 3. The government and defense counsel would like to engage in plea negotiations to see if this
21 case can be resolved short of trial. While the parties have engaged in preliminary discussions, further
22 time is needed to discuss the evidence and charges.

23 4. The government does not oppose the requested continuance.

24 The parties further believe that time should be excluded, in that failure to grant the requested
25 case schedule would unreasonably deny the defendants continuity of counsel, and unreasonably deny
26 both the defendants and the government the reasonable time necessary for effective preparation, taking
27 into account the parties’ due diligence in prosecuting this case. 18 U.S.C. Section 3161(h)(7)(B)(iv).
28 Based on the above-stated findings, the ends of justice served by the schedule as requested outweigh the

1 interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial
2 Act. Therefore, the parties request that the Court exclude the time until the new hearing date from
3 calculations under the Speedy Trial Act.

4 Dated: August 24, 2023

PHILLIP A TALBERT
United States Attorney

6 */s/ Arin C. Heinz*
7 ARIN C. HEINZ
8 Assistant United States Attorney

9 DATED: August 24, 2023

10 */s/Peter M. Jones*
11 PETER M. JONES
12 Attorney for Defendant Evaristo Checchin

13 **ORDER**

14 IT IS HEREBY ORDERED that the status conference in this case be continued from September
15 6, 2023, until November 15, 2023 at 1:00 p.m.

16 IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as
17 requested outweigh the interest of the public and the defendants in a trial within the original date
18 prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of
19 computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must
20 commence, the time period of September 6, 2023 until November 15, 2023, inclusive, is deemed
21 excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by
22 the Court at the parties' request on the basis of the Court's finding that the ends of justice served by
23 taking such action outweigh the best interest of the public and the defendant in a speedy trial.

24 Dated: 8/25/2023

25 *Sheila K. Oberto*
26 Honorable Sheila K. Oberto
27 UNITED STATES MAGISTRATE JUDGE